

January 9, 2006

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Glen Bowers
Date of Filing: December 13, 2005
Case Number: TFA-0138

On December 13, 2005, Glen Bowers completed the filing an Appeal from a determination issued to him on November 16, 2005, by the Manager of the Department of Energy's Rocky Flats Project Office. This determination responded to a request for documents that Mr. Bowers submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require the DOE to perform an additional search for responsive material.

I. Background

Mr. Bowers filed a request by electronic mail under the FOIA for a copy of "The Dow Corral Sub Title: The Rocky Flats Plant Crossroads: The Paper September 12, 1959." He explained in his request that the edition he sought contained a photograph and text about his father, John Bowers. By letter dated August 9, 2005, the director of the DOE's Headquarters FOIA Office informed Mr. Bowers that his request was being forwarded to the Rocky Flats Project Office, because any document responsive to his request, if it existed, would fall under the jurisdiction of that office. Rocky Flats searched for a copy of that edition of the *Dow Corral* but was unable to locate the requested document. In a November 16, 2005 determination letter sent to Mr. Bowers, the Manager of Rocky Flats informed Mr. Bowers that the only September 1959 editions of the *Dow Corral* that Rocky Flats located in its microfilm records were those dated September 4 and September 18. The Manager further stated that neither of those editions contained any mention of Mr. Bowers's father. In his Appeal, Mr. Bowers challenges the adequacy of the search, primarily on the grounds that Rocky Flats did not search for or review paper copies of the *Dow Corral*.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require

absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search was in fact inadequate. *See, e.g., Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted Rocky Flats to ascertain the adequacy of the search. A search of the historical records of the Rocky Flats facility yielded the following information concerning the *Dow Corral*. The *Dow Corral* was an employee newsletter that appears to have been published on a biweekly basis. Microfilm records included editions published on September 4, 1959, and September 18, 1959. No records were found of any other editions of the *Dow Corral* published in September 1959. Furthermore, microfilm is the only medium on which Rocky Flats has any records of the *Dow Corral*. Paper copies of the *Dow Corral* were maintained at some point in the past, but were long ago donated to the Rocky Flats Cold War Museum, an entity completely independent of the DOE and its contractors at Rocky Flats. *See* Memorandum of Telephone Conversation between Andrea Wilson, Kaiser-Hill Records Division, and William Schwartz, Office of Hearings and Appeals (December 8, 2005). After reviewing the record in this case, we find that Rocky Flats conducted a search that was reasonably calculated to uncover the requested information. * Accordingly, this Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Freedom of Information Act Appeal filed by Glen Bowers on December 13, 2005, OHA Case Number TFA-0138, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: January 9, 2006

* In his Appeal, Mr. Bowers raises a number of questions that fall outside the scope of this decision. We will address two of them, however. Mr. Bowers asks whether Dow Chemical, a former contractor at Rocky Flats, might have copies of the *Dow Corral*. We do not know whether Dow Chemical has such records, but suggest that Mr. Bowers raise that question directly with Dow Chemical. Mr. Bowers also asks how he might obtain copies of the September 4, 1959 and September 18, 1959 editions of the *Dow Corral*. Although the proper method for requesting this information would entail submitting a new FOIA request, we have spoken to the Rocky Flats office about this new request, and they have informed us that they will, upon receipt of this Decision and Order, mail copies of those two editions to Mr. Bowers.